



# **MINUTES**

**Tuesday, September 6, 2011**

**FORT MYERS BEACH TOWN COUNCIL  
TOWN HALL – COUNCIL CHAMBERS  
2523 ESTERO BOULEVARD  
FORT MYERS BEACH, FLORIDA 33931**

## **I. CALL TO ORDER**

Mayor Kiker called to order the September 6, 2011 Meeting of the Town Council at 6:31p.m. Present along with Mayor Kiker: Vice Mayor Raymond, Council Members Kosinski, and Mandel; Council Member List was excused; Also Present: Town Manager Stewart, Town Attorney Miller, and Town Clerk Mayher.

## **II. INVOCATION – Deacon Kiesel, Church of the Ascension**

## **III. PLEDGE OF ALLEGIANCE**

## **IV. APPROVAL OF FINAL AGENDA**

Mayor Kiker noted that discussion of the Short-Term Rental Fees and the Town Hall referendum was added under the Council Members Items and Reports.

## **V. PUBLIC COMMENT**

### **Open Public Comment**

Jim Seabury, resident and husband of Sally Seabury who was a duly elected member of the Fort Myers Beach Independent Library District Board, read into the record his comments. He gave a brief overview of the Library Board which included but was not limited to when the volunteer Board was created, boundary lines for the jurisdiction of the Board, the purpose of the Library District and Board. He discussed his displeasure regarding comments made by the Town Council about the Library Board members; and how the library services were audited; and noted the Facilities Report was appropriately submitted to the Town according to State Statutes. He requested an apology to the entire Library Board from the Town and the Town Attorney.

Sally Seabury, resident and member of the Fort Myers Beach Independent Library District Board, read her comments into the record. She expressed her discontent with the comments made by the Town as it related to their Facilities Report submitted to the Town. She explained the basis of why she believed

these comments to be unfounded; and questioned stories she heard regarding the Town, the Lee County Board of County Commissioners, and possible further investigation of the Library Board.

Becky Werner, resident, requested the Town not interfere any further with the construction of the library.

John Corning, resident, reported the Fort Myers Beach Library District Board just voted to lower their millage rate by 20% and questioned why the Town of Fort Myers Beach was seeking to raise their millage rate by 15%, and other fees on the Town residents. He discussed the number of staffing and volunteers and capital projects of the Library Board in comparison to the Town's staffing and use of a former bank building as a Town Hall. He noted his displeasure with the Town's accusations against the Library District Board.

Kelly Leary, resident, expressed her dissatisfaction with the Town's allegations against the Library District Board. She claimed the Town Council should embrace the library expansion and realize what a great asset this will be for the community.

Kathleen Cameron, resident, read her comments into the record concerning the Library District Board, and she discussed her discontent with the Town's accusations and investigation of the Board.

A.J. Bassett, resident, stated she lived on the Island for 71 years and gave a brief historical background of the Town's two libraries approximately 71 years ago, one of which was the beach school library. She expressed her disappointment with the Town's allegations and comments about the Library District, and asked that they support the library.

### **Closed Public Comment**

Council Member Mandel addressed comments by the public concerning the Library District Board. He explained that he had stated at a previous meeting that the Council had not taken a position for or against the Library. He commented that the only issue they dealt with was when learning that the Council had a responsibility, one they never knew of prior, that according to statute they had an obligation to determine oversight. The Town sent letters to the Fire District, the Mosquito District, and the Library District because the Town needed what Chapter 189 required. He also invited the public to stay to hear the presentation on the Town's proposed budget.

Mayor Kiker reported that he and the Town Manager had met with the County Commissioners a few weeks ago. He stated the Council did write and authorize on three separate occasions, on three different subjects, with three different letters to the Commissioners: 1) a letter about water rates, 2) a letter on beach renourishment and Estero Boulevard, and 3) a letter concerning the library and that the Town Council wanted to step aside since it was a Lee County matter of oversight and that the County should exercise their oversight responsibilities.

Town Manager Stewart stated he concurred with the Mayor's comments, and that there was never a time when either he or the Mayor suggested to anyone that the Library District be dissolved.

Mayor Kiker recognized Sally Seabury.

Sally Seabury, resident and member of the Library District Board, reported she attended the County Commission meeting last week where the County Commissioners stated it was a unanimous decision by the 'Board of Fort Myers Beach' that our fiscal management of the library was in question, and they needed to decide whether to turn the matter over to the Attorney General or the Auditor General. She noted that the Library District was fiscally responsible and was proven so through an audit.

Discussion ensued regarding the comments by the County Commissioners at their meeting last week.

Consensus was to have the Mayor write a letter or call the Library District Board to approach the library again in order to work with them and move forward.

Discussion was held concerning comments regarding the Library District Board.

## **VI. LOCAL ACHIEVEMENTS AND RECOGNITIONS ADVISORY COMMITTEES ITEMS AND REPORTS**

None.

## **VII. APPROVAL OF MINUTES**

- A. June 6, 2011 Work Session**
- B. June 20, 2011 Work Session**

**MOTION:** Motion by Vice Mayor Raymond to approve the minutes without changes; second by Council Member Mandel.

**VOTE:** Motion passed 4-0. Council Member List was absent.

## **VIII. CONSENT AGENDA**

- A. Authorization to Award Contract, RFP 11-02-CR, Cultural Facilities Landscape Maintenance
- B. Proclamation: "National Recovery Month" – Lee County Coalition for a Drug-Free Southwest Florida

**MOTION:** Motion to approve the Consent Agenda Items A and B by Council Member Kosinski; Second by Vice Mayor Raymond.

**VOTE:** Motion passed 4-0.

## **IX. PUBLIC HEARING**

- A. Resolution 11-13, First Public Hearing to Adopt Tentative Millage for FY2012

Town Clerk Mayher read the resolution title:

### **RESOLUTION 11-13**

**A RESOLUTION ADOPTING THE TENTATIVE OPERATING AD VALOREM MILLAGE RATE FOR THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA FOR FISCAL YEAR 2012; DETERMINING THAT THE PROPOSED OPERATING MILLAGE RATE IS \_\_\_\_\_% LESS THAN THE ROLLED-BACK RATE; ESTABLISHING THE DATE, TIME AND PLACE FOR A FINAL HEARING TO ADOPT THE FINAL OPERATING AD VALOREM MILLAGE RATE FOR FISCAL YEAR 2012; PROVIDING AN EFFECTIVE DATE.**

Town Manager Stewart pointed out this was the first of two public hearings for Resolution 11-13 and explained the statutory requirement of setting the millage first and then address the budget. He noted the original millage was set at 1.1 with the understanding that it could not be higher, and the Council and staff would work to reduce that number. He reported at the Work Session earlier today Council worked to reduce the millage to .8144, and staff recommended the Council approve the rate.

Council Member Mandel noted that the proposed millage rate was less than the current fiscal year's millage rate.

Vice Mayor Raymond discussed the stability of a public service tax versus the unstableness of ad valorem taxes.

Mayor Kiker noted the Town was receiving the same net of taxes as the year before, just from a different source.

Discussion ensued regarding public service taxes and ad valorem taxes.

Mayor Kiker discussed why he would not support the proposed budget because of the use of reserves.

Town Manager Stewart discussed the Town's reserves and the use of reserves; and he reviewed the proposed restructuring of certain departments and how that should impact the budget in a positive manner.

Discussion was held concerning the operational expenses of Bay Oaks; Town staffing both prior to and after Bay Oaks; use of the reserves; and it was noted that Town employees would not be receiving a raise again this year for the fourth year in a row.

Mayor Kiker questioned funding for the opening of the Mound House and the Fourth of July fireworks.

Town Manager Stewart pointed out that \$18,000 was taken out of salaries for Bay Oaks and would be used for fireworks; and the Mound House would come out of general reserves, not a specific capital account.

Discussion was held concerning funding the Mound House.

Council Member Mandel noted the Town has not laid off any employees, and the Town was working on three projects with a potential savings that could exceed the \$185,000 out of reserves.

Town Manager Stewart addressed the potential savings from bringing the PWSI in-house and reducing personnel health costs.

**Public Comment Opened.**

Kathleen Cameron, resident, explained why she would rather see an increase in the millage rate rather than the public service tax. She addressed her concerns regarding what she felt was increased staffing requirements at Bay Oaks since taken over by the Town; and maintenance staffing costs.

Carol Landry, resident, discussed her thoughts on fiscal responsibility. She explained she was opposed to any tax increase and to the public service tax. She suggested the Town cut back on hiring, and buying things they can't afford or need.

Pat Smith, resident, noted the existing poor economy, lower property values, and expressed her opposition to a public service tax. She discussed her opinion of the span of control among Town personnel, and matters she believed the Town was getting involved in that could cause the need for personnel to increase. She felt the Town should concentrate more on the basics such as but not limited to road repair, storm drainage, and major repairs to the water utility system. She urged Council to think hard about making the cuts back to a 'real' rolled-back rate.

John Poland, resident, stated his income was based on Social Security and he had not received an increase in three years. He noted his opposition to the public service tax.

Charlie Whitehead, non-resident, stated he did make use of the Bay Oaks facility and was president of Beach Little League. He noted his belief that the services provided at Bay Oaks was crucial to the community, and he thanked the Council for working hard to provide them.

Garr Reynolds, resident on Estero Boulevard, asked the Council not to raise taxes; he addressed Town personnel; and suggested keeping the millage rate at the rate from two years ago. He opposed the public service tax.

**Public Comment Closed.**

Town Manager Stewart noted the Town was a multi-purpose local government that provided many different services. He addressed assessed values and the proposed millage rate.

Discussion was held regarding the stability of the public service tax; and it was noted the public service tax would go into effect in April.

**MOTION:** Motion by Council Member Mandel to approve Resolution 11-13 adopting and levying ad valorem taxes within the Town of Fort Myers Beach for the tax year 2012, in the tentative amount of .8144 mills (\$0.8144 per \$1,000) and taking other action as authorized in such resolution; second by Vice Mayor Raymond.

Town Attorney explained that the proposed millage rate was a decrease to the rolled-back rate.

**VOTE:** Motion passed 3-1; with Mayor Kiker dissenting and Council Member List was absent.

*Recess at 8:07 p.m. – Reconvened at 8:25 p.m.*

B. Resolution 11-14, First Public Hearing to Adopt Tentative Budget for FY2012

Town Clerk Mayher read the resolution title:

**RESOLUTION 11-14**

**A RESOLUTION ADOPTING THE TENTATIVE BUDGET FOR THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA FOR FISCAL YEAR 2012; PROVIDING AN EFFECTIVE DATE.**

Town Manager Stewart addressed changes in the budget; reorganization of Parks and Recreation; the public service tax; an accounting mechanism change that had to do with the Community Development Department as it related to permitting fees; capital projects that are unfunded; and changes to the budget that were requested earlier today by Council. He noted the millage rate was less than the rolled-back rate.

**Opened Public Comment**

No speakers.

**Closed Public Comment**

**MOTION:** Motion by Council Member Kosinski to approve Resolution 11-14 adopting the tentative Town operating and capital budget for FY2012, finding that it is consistent with the requirements of the Town Comprehensive Plan, and setting the final budget hearing for September 26, 2011 at 6:30 p.m.; second by Vice Mayor Raymond.

**VOTE:** Motion passed 3-1; with Mayor Kiker dissenting and Council Member List was absent.

**X. ADMINISTRATIVE AGENDA**

A. Introduction of Ordinance 11-07, Telecommunications Facilities

Town Clerk Mayher read the ordinance title:

**AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, CREATING ARTICLE 1 IN CHAPTER 26 OF THE CODE OF ORDINANCES TO BE ENTITLED “COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY”; PROVIDING FOR INTENT AND PURPOSE; PROVIDING FOR DEFINITIONS; PROVIDING FOR REGISTRATION WHEN PLACING OR MAINTAINING COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY; PROVIDING FOR NOTICE OF TRANSFER, SALE OR**

**ASSIGNMENT OF ASSETS LOCATED IN PUBLIC RIGHTS-OF-WAY; PROVIDING FOR PLACEMENT OR MAINTENANCE OF A COMMUNICATIONS FACILITY IN PUBLIC RIGHTS-OF-WAY; PROVIDING FOR SUSPENSION OF PERMITS; PROVIDING FOR APPEALS; PROVIDING FOR INVOLUNTARY TERMINATION OF REGISTRATION; PROVIDING FOR EXISTING COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAYS; PROVIDING FOR INSURANCE; PROVIDING FOR INDEMNIFICATION; PROVIDING FOR CONSTRUCTION BOND; PROVIDING FOR ENFORCEMENT REMEDIES; PROVIDING FOR ABANDONMENT OF A COMMUNICATIONS FACILITY; PROVIDING FOR FORCE MAJEURE; PROVIDING FOR RESERVATION OF RIGHTS AND REMEDIES; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.**

Town Manager Stewart reported this was an ordinance the Town Attorney identified as necessary,

Town Attorney Miller explained that in 2001 the State adopted the Telecommunications Act and there was also federal legislation that provided for the same treatment of all telecommunications providers. She noted this ordinance would treat all providers the same and staff would notify Century Link and Comcast.

**Public Comment Opened.**

**No Speakers.**

**Public Comment Closed.**

**MOTION:** Motion by Council Member Mandel moved to introduce Ordinance 11-07, and set a public hearing date for September 26, 2011; second by Council Member Kosinski.

**VOTE:** Motion passed 4-0. Council Member List was absent.

- B. Release of Lien Relating to Code Enforcement Case No. CE 10-0116, 7831 Buccaneer Drive, Ft. Myers Beach, FL

Town Manager Stewart reviewed the unique situation and events that surrounded the subject property and noted the owners were deceased. He pointed out that the Town did secure and clean the property at a cost of \$2,259.80 and the Town was reimbursed for those costs. He recommended Council approve the request for a Release of Lien upon payment of \$1,500.

Town Attorney Miller explained the reduction of the fine should be pursuant upon the purchaser obtaining and diligently pursuing completion of the construction.

Attorney Meador, representing the purchaser, requested the Council approve the reduction of the fine.

Town Manager Stewart requested the Council approve the request contingent upon the building permit must be obtained within 90 days of the date the purchaser takes title to the property, and the purchaser will pursue completion.

**Public Comment Opened.**

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Council Member Kosinski declared a voting conflict, and submitted **Form 8B, Memorandum of Voting Conflict for County, Municipal, and Other Public Officers**, Council Member Kosinski declared the disclosure of local officer's interest:

*I, Joseph C. Kosinski, hereby disclose that on or about July, 2011: a measure came or will come before my agency which inured to my special private gain or loss; the measure before my agency and the nature of my conflicting interest in the measure is as follows:*

*Town Council, September 6, 2011, Blue sheet #2011-089, approve release of lien relating to Code Enforcement Case No. CE 10-0016 for property located at 7831 Buccaneer Drive, Fort Myers Beach. On or about July, 2011 I was contacted by someone, whom I don't remember, about doing possible engineering drawings in relation to this property. My involvement was no more than this discussion. I feel I should abstain from voting on this matter due to a possible conflict of interest. I may or may not be involved in the future with this residence.*

**Public Comment Closed.**

**MOTION:** Motion by Council Member Mandel to approve the Release of Lien relating to Code Enforcement Case No. 10-0116 for property located at 7831 Buccaneer Drive, Fort Myers Beach, FL upon payment to the Town of a reduced fine in the amount of \$1,500 and with the understanding that the purchaser of the property will obtain a building permit within 90 days of taking title to the property and will diligently pursue completion of the residence; second by Vice Mayor Raymond.

**VOTE:** Motion passed 3-0; Council Member Kosinski abstained, Form 8B. Council Member List was absent.

**XI. PUBLIC COMMENT**

**Public Comment Opened.**

**No Speakers.**

**Public Comment Closed.**

**XII. TOWN MANAGER'S ITEMS**

Town Manager gave a brief update on the Seafarer's and noted staff had met with County staff and informed them of what they would need to do regarding Town issues as it pertained to the commercial planned development. He made Council aware of the fact that some underground grease storage tanks remained on the subject site. He reported the County asked whether or not it would make sense for them to separate the parking lot from the current CPD – Town staff recommended against it.

**XIII. TOWN ATTORNEY'S ITEMS**

Town Attorney Miller commented regarding the budget and the Parks and Recreation Department. She explained that the Town Charter required departments to be created by ordinance; therefore, she would



prepare the appropriate ordinance and include the Town Clerk's department since an ordinance was not done when it was created a few years ago.

#### **XIV. COUNCILMEMBERS ITEMS AND REPORTS**

Council Member Kosinski briefly noted a fund raising event this week for a veterans' group.

Vice Mayor Raymond reported on the Short-Term Rental Fee meeting he organized. He discussed issues he had with a proposed ordinance on short-term rental fees; he reviewed points in the proposed ordinance he believed to be flawed such as but not limited to the fee being too high; he suggested whenever a proposed ordinance was placed before the public at a general meeting, the Council should have a workshop on it first to dissect it. He stated the meeting was a success with approximately 50 residents in attendance at the workshop, and he thanked the Town staff for being at the meeting to answer questions. He concluded his comments with a statement that "the Island has spoken, and I am withdrawing the ordinance".

Discussion ensued regarding the Short-Term Rental Fee public meeting Vice Mayor Raymond conducted; and recycling which was an issue that arose from the Short-Term Rental Fee public meeting.

Vice Mayor Raymond reviewed his desire to have a referendum to either build or buy a new Town Hall, and that it would include long-term financing.

Town Manager Stewart reported the Lee County Election Supervisor informed staff that the next available election to place a referendum would be for the Presidential primary which would be held in January, and the deadline to get the referendum ballot language to the Supervisor would be October 1, 2011. If that election date was not met, the next available date would be the Town's election in 2013.

Town Attorney Miller investigated this matter and reported State law required an ordinance or enabling resolution; the resolution being the easier of the two. She stated that she could not find any language in the Town's Charter that the referendum had to be done by ordinance. She felt that the referendum could be accomplished by a resolution and she has contacted the bond counsel to ensure the ballot language is crystal clear.

Town Manager Stewart requested direction as to exactly what the Town was going to be asking on the ballot regarding the Town Hall such as, will it be for an advisory referendum simply asking the public if they support to buy or build a new Town Hall, or does the public want to move forward and authorize the Town to a debt repayment of three years.

Discussion ensued concerning the referendum for the Town Hall; general obligation debt; and a dollar amount.

Consensus was that the referendum would be asking the public if they wanted to do a debt repayment of longer than three years; and staff would work to get this on the January primary election ballot.

Mayor Kiker noted the importance of obtaining as much public input on the matter as possible, and suggested public input at upcoming meetings.

Town Manager Stewart reported for the public's information that the Town was currently paying over \$100,000 in rent annually.

Council Member Kosinski, as part of promoting the beach, asked if it would be possible to install a 'time' camera on the beach to show the beach renourishment project.

Discussion was held regarding a camera on the beach; consensus was that staff would investigate Council Member Kosinski's suggestion.

Mayor Kiker questioned the status of advertising for the Town's volunteer committees.

Town Clerk Mayher reported the advertising has been on-going; and for committee members whose term was expiring they were required to submit a letter seeking reappointment on or before September 1<sup>st</sup>, and for Islanders seeking appointment the Town Clerk was accepting applications until September 16<sup>th</sup> with the intention that appointments would be made at the October 3, 2011 Council meeting.

Mayor Kiker questioned the status on the appointments to the Audit Committee.

Town Clerk Mayher described the advertising completed for the Audit Committee and stated that as of today she received one new letter of interest for appointment and she had one letter for appointment from a few months ago.

Mayor Kiker requested weekly updates on the status of committee vacancies, requests for reappointments, and requests for appointments.

Town Manager Stewart acknowledged the request and stated he would include the information in his Weekly Report.

Mayor Kiker reported the County requested to do a ribbon-cutting ceremony for Crescent Beach and include an open house for Parks and Recreation. He asked if the Town was still planning this type of event, or should he inform the County to proceed on their own.

Town Manager Stewart stated staff was prepared to do either one; however, he requested Council direction.

Discussion ensued regarding the Crescent Beach ribbon-cutting ceremony; Mayor Kiker asked Town Manager Stewart to contact the County on this matter to determine what they had planned.

Mayor Kiker requested the Council's permission to attend and speak at the County Commissioner's budget hearing tomorrow regarding a letter sent to the County Commissioners asking if they were, collectively or individually, ready to go on record if they were ready to start the Estero Boulevard rehabilitation. He recounted his findings on this matter after discussions with Town staff, Town

Manager Stewart and Public Works Director Lewis. He invited the Council to attend the BOCC meeting.

Vice Mayor Raymond and Town Manager Stewart expressed an interest in attending the Board of County Commissioners' meeting tomorrow.

### **AGENDA MANAGEMENT**

Town Manager Stewart reported the following was added to the Agenda Management:

- Town Hall referendum and Workshop
- Commencement of the Cultural Facilities Landscape Maintenance
- Proclamation for "National Recovery Month" send to appropriate authorities
- Advertise the tentative millage rates and upcoming Final Public Hearing for the budget
- Finalize telecommunications ordinance and bring back to Council on 9/26/11
- Work with individuals on the Release of Lien for the Code Enforcement Case No. CE 10-0116, and to accomplish work as specified within the next 90 days
- Provide update in the Weekly Report on Committee vacancies, and appointment/reappointment requests
- Contact County Manager regarding Crescent Beach ribbon-cutting
- Investigate a camera on the beach/pier to watch the beach renourishment project

### **XV. RECAP OF ACTION ITEMS**

### **XVI. ADJOURNMENT**

Motion by Council Member Kosinski, seconded by Vice Mayor Raymond to adjourn. Meeting adjourned at 9:18 p.m.

Adopted \_\_\_\_\_ With/Without changes. Motion by \_\_\_\_\_

Vote: \_\_\_\_\_

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Michelle D. Mayher, Town Clerk

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